APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/296,120	04/21/1999	THOMAS J. REDDIN	03628-0400	7995

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EXAMINER
JANVIER, JEAN D

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.		Applicant(s)	
Office Action Summary	09/296,120		REDDIN ET AL.	
	Examiner		Art Unit	
	Jean D Janvier		3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 December 2002</u> .

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-57 and 59-66</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-57 and 59-66</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____ .

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

U.S. Patent and Trademark Office

PTO-326 (Rev. 04-01)   Office Action Summary   Part of Paper No. 14

Response to Arguments

112 Argument

The Examiner maintains the rejection of claims 44-45 under *35 USC 112(2)* because the Applicant's arguments are not persuasive. Further, the Examiner does not comment on issued patents. Claims 44 and 45 must explicitly recite the steps of claims 1 and claim 39 respectively since claims 44 and 45, taking alone, do not further limit the features disclosed in claims 1 and 39 respectively. Therefore, claims 44 and 45, having now included the limitations of claims 1 and 39 respectively, must be rewritten in independent form to over the rejection.

102 Argument

First of all, regarding claim1, Applicant argues that, as an initial matter, Deaton 's disclosure of "purchasing data" does not read on the "representative activity of the predetermined type of consumer" limitation, ie "data" not a "use". The Examiner completely and respectfully disagrees with the Applicant's findings. In fact, "purchasing data" are inherently associated with products or services bought for immediate or subsequent consumption or use and therefore, "purchasing data" as disclosed by Deaton represent indeed products or services used or consumed (use data). Furthermore, using this use or consumption data stored in a database, the customer's interaction with a product or service or the customer's use of a product or service can be tracked or determined. And using this interaction data or use data or consumption data, the system as taught by Deaton can predict the customer's next due date to purchase a type of product. For example, if a customer begins a pattern of buying a certain type of diapers, the system may issue a coupon to purchase diapers at the time, which the customer's purchase

history indicates he is expected to buy diapers, thereby inducing the customer to shop more and

spend more money at a participating POS. Moreover, by tracking the purchase cycle of various

products bought by the customer, the system can anticipate the next purchase date in order to

issue incentives to the customer prior to that anticipated purchase date (col. 71: 46-67).

Second of all, Applicant argues that Deaton does not disclose the use of an item, such as

coffee, **during one or more representative activities.** Here, it appears that the Applicant wants

the Examiner to specify where in the Deaton's reference are shown the **circumstances or**

representative activities associated with the customer's use of the coffee or diapers bought at a

POS subsequent to redeeming a coupon corresponding to the coffee or diapers. These limitations

are inherently supported in the art or implicitly disclosed in the current reference. For Example,

the customer can drink his coffee, subsequent to making the coffee, while he is watching TV,

taking a break, talking to friends and so on and so forth. Additionally, it is understood that, while

in a grocery store or supermarket shopping, the customer can decide to taste grapes before

buying them or a cup of coffee for free before he decides to redeem a coupon associated with the

same coffee brand he tastes. All these activities, as disclosed above, occur on a daily basis in

grocery stores or supermarkets in the USA. Moreover, the type of consumers disclosed in the

Deaton's reference are known, identified and predetermined. For instance, consumers are

classified as frequent or infrequent consumers based on their shopping activities at participating

POSes and, using purchase history data related to these activities, the system can offer more

substantial coupons to an infrequent consumer in order to entice the infrequent customer or

consumer to visit participating POSes or retailers more frequently where he can redeem the

coupons.

Moreover, in response to the Applicant's request that the Examiner provide references in Deaton as to a disclosure of a "consumer using an item during an activity", the Examiner had already addressed this argument, as shown above. Further, a "consumer using an item during an activity", such as while on the train or in a store, is a very broad idea. Indeed, a consumer using an item **(coffee)** during an activity or **while on the train or in a store** is a matter of choice, design choice, design consideration or great convenience, which **(while on the train or in a store)** does not directly impact, for example, the quantity of coffee the consumer will drink and how the consumption data associated with the consumer's use of the coffee will be used to further target the said consumer, as understood by those skilled in the art. Finally, features that are inherent in the art or widely used in the industry need not be disclosed in a reference in order for these features to be anticipated by the current prior art; in other words, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art does not preclude a finding of anticipation (MPEP 2131.01 (III).

Finally, the arguments related to the features of the claimed invention as presented by the Applicant are fully considered by the Examiner and, after a careful review of the rejection as it stands, the Examiner once again concludes that the rejection is indeed proper and thus, **the current office action, as submitted below, has been made final.**

DETAILED ACTION

Specification

Status of the claims

Claims 1-66 were originally presented. After the First Non-final Office Action, claim 58

was canceled. Claims 1-57 and 59-66 are now pending in the Instant Application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 44-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention. In fact, the steps of claim 1 as recited should be incorporated within the bodies of

claims 44-45 and upon executing proper computer instructions on a computer processor these

steps can be performed. Hence, claims 44 and 45 must be rewritten in independent form.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-57 and 59-66 are rejected under 35 U.S.C. 102(b) as being anticipated by

Deaton et al, US Patent 5,649,114.

As per claim 1, Deaton et al discloses a method comprising the steps of -

1.

Determining one or more representative activities, **such as the customer's purchases made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data, and so on is established**, of said predetermined type of consumer **so that the customer can be specifically targeted (col. 71: 31-67; col. 86: 65 to col. 89: 22; col. 81: 56 to col. 82: 11; figs. 27-32; col. 10: 30-67)**;

Determining one or more representative uses of said item by said predetermined type of consumer, **based upon the customer's purchase pattern or by tracking the customer's purchase cycle of a product to anticipate when the customer's may run out of the product and need to buy the product again,** during said one or more representative activities (col.71: 31-67; col. 10: 30-67); and

Creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities **using the consumer's buying pattern corresponding to the item or product or by tracking the customer's or consumer's purchase cycle of the product to anticipate when the customer's may run out of the product and need to buy or re-order the product** (col.71: 31-67; col. 10: 30-67).

As per claims 2-4, Deaton et al further disclose a method comprising the steps of

gathering lifestyle information through the purchase history of an individual consumer during a

particular period of time and subsequently performing an analysis of such lifestyle information

so that a personal discount coupon can be provided to the individual customer redeemable on a

product that the consumer has previously indicated a tendency to buy (col. 71: 31-45; figs. 29;

col. 10: 30-67).

As per claims 5-19, 24-31, 34-37, 39, 41-42 and 47-52, Deaton et al further disclose a

method for customer promotion (advertising) wherein an identified customer using a check or

credit card at a POS in a retail store during a shopping trip to pay for groceries and based on the

identified customer prior shopping history, collected over a specific period of time, stored in a

database associated with CVC Master Controller 965 of fig.19, he will receive a discount coupon

redeemable during a future transaction on a particular promoted or advertised product, such as a

brand of coffee, for which the said customer has previously indicated a tendency to buy upon

analyzing his prior shopping transaction using conventional data mining and niche marketing

techniques. This customized discount coupon is intended not only to encourage the identified

customer to return to the store to buy more items, but also to promote the store products in

general. This discount coupon, promoting this coffee brand, can be communicated to the

identified customer at the POS in the retail store in a printed form by printing a hard copy using

receipt printer 969 connected to ECR of fig. 20 or the discount coupon can be electronically

displayed to the customer on ECR display 968 of fig. 20 or stored in the database associated with

CVC Master Controller 965 of fig. 19 or encoded on the customer's smart card 53 (col. 4: 52 to col. 10: 67; col. 71: 31-45; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

As per claims 20-23, it is inherent in the art that a predetermined type of packaging will be carefully selected to package a promoted product based on some parameters associated with a target market, thereby making the promoted product or item more attractive to the targeted audience. For example, it is understood that Deaton's **promoted coffee** will be sold in a carefully selected package.

As per claims 32, 33, 38 and 43, it is inherent in the art that advertised products or promoted products or specials can be communicated to the customers through large posters displayed within the store or outside the store windows. It is also very popular in the industry to distribute product promotions such as coupons on flyers placed in the store to be picked by the customers upon entering the store. Furthermore, retailers find it very convenient and effective to advertise their products, including discount coupons, in a virtual environment or Internet via a Web site by having information displayed on (remote) screens associated with customers' computers upon accessing the retailers' web sites, thereby allowing millions of prospective customers to access their store in real time twenty-four hours a day and seven days a week (col.10: 33, 42, 45, 55).

As per claims 44-45, Deaton et al disclose a system or method having the appropriate

Hardware and Software or program subroutines to perform the various steps or tasks as set forth

in their system (figs. 1-47; col. 10: 30-67).

As per claim 40, it is anticipated in the Deaton et al system that an identifier customer

may receive a discount coupon through the mail based on his purchase history criteria (col. 10:

63-67; col. 67: 23-39). It is also understood in the system of Deaton et al that a customer will

originally fill out an application, providing customer's information, before a customer's personal

check can be accepted by the retail store as payment. Further, the customer's information

provided in the application can be used to profile the identified customer.

Claim 46 substantially recites the limitations of claim 1 and therefore, the limitations of

claim 46 are rejected under a similar rationale. Claim 46 further recites determining the manner

in which a predetermined type of consumer selects an item in a predetermined purchase shopping

environment upon creating a demand for said item by said customer. As per these features,

Deaton et al further disclose a method for customer promotion (advertising) wherein an

identified customer using a check or credit card at a POS in a retail store during a shopping trip

to pay for groceries and based on the identified customer prior shopping history, collected over a

specific period of time, stored in a database associated with CVC Master Controller 965 of

fig.19, he will receive a discount coupon redeemable during a future transaction on a particular

promoted or advertised product, such as a brand of coffee, for which the said customer has

previously indicated a tendency to buy upon analyzing his prior shopping transaction using

conventional data mining and niche marketing techniques. This customized discount coupon is

intended not only to encourage the identified customer to return to the store to buy more items,

but also to promote the store products in general. This discount coupon, promoting this coffee

brand, can be communicated to the identified customer at the POS in the retail store in a printed

form by printing a hard copy using receipt printer 969 connected to ECR of fig. 20 or the

discount coupon can be electronically displayed to the customer on ECR display 968 of fig. 20 or

stored in the database associated with CVC Master Controller 965 of fig. 19 or encoded on the

customer's smart card 53 (col. 4: 52 to col. 10: 67; col. 71: 31-45; col. 89: 66 to col. 90: 34; figs.

29; col. 67: 23 to col. 68: 19).

53.

     determining the activities, **or purchasing activities corresponding to the customer's**

purchase history collected over a period of time and stored in a database associated with

CVC database of Master Controller 965 of fig. 19, of said consumer (col. 65: 61 to col. 70:

28);

determining the needs of said consumer for said beverage during said daily activities **upon**

analyzing the customer's purchase history or prior shopping transaction collected over

time using conventional data mining and/or niche marketing techniques to figure the

customer purchase tendency (col. 71:31-45); and

     marketing said beverage in association with said needs

of said consumer for said beverage during said activities **or shopping transaction activities**

collected over a period of time by providing a discount coupon redeemable on the product,

such as a brand of coffee, for which the customer has indicated a tendency to purchase (col.

71: 31-45).

(col. 4: 52 to col. 10: 67;col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

54.

determining the number of said items selected within

said purchasing environment or retail store during a first predetermined interval or over a

specific period of time through the customer's purchase history or current transaction at a

POS (fig. 28-31);

determining one or more types of shoppers, whose shopping transaction has been

analyzed using traditional data mining and/or niche marketing techniques, for said item,

such as a brand of coffee, in said purchasing environment or retail store, whose has

previously indicated based on his prior shopping transaction a tendency to buy a particular

product or item (col.71: 31-45);

determining representative shopping activities of said one or more types of shoppers,

whose shopping transaction has been analyzed using traditional data mining and/or niche

marketing techniques;

determining representative uses for said item during

said representative shopping activities of said one or more types of shoppers upon

analyzing one or more shopper's prior shopping transaction and subsequently determining

the shopper(s) tendency to buy a particular product or item (col.71: 31-45);

deploying solutions **or marketing strategies** within said purchasing environment **or**

retail store to create demand for said item, **such as a brand of coffee**, by said one or more types

of shoppers based upon one or more of said representative uses **derived from the shopper's**

purchase history of said

item during one or more of said representative **transaction** activities **upon analyzing one or**

more shopper's prior shopping transaction and subsequently determining the shopper(s)

tendency to buy a particular product or item (col.71: 31-45);

determining the number of said items selected **or purchased** within

said purchasing environment **or retail store** during a second predetermined

interval **or second period of time or second preset number of weeks**, said second

predetermined interval occurring after said deploying step **or marketing strategies which**

provide a discount coupon redeemable on the identified item or a brand of coffee to a

qualified shopper (col.71: 31-45; **figs. 28-31**); and

determining the difference between the numbers of said

items purchased during said first predetermined interval and said

second predetermined interval **upon analyzing, using conventional data mining and/or niche**

marketing techniques, an identified shopper's prior shopping transaction during a series of

preset number of weeks and subsequently, upon meeting a predetermined criterion by the

shopper, providing a discount coupon to the identified shopper or customer redeemable on

the identified item, thereby making the coupon program more effective (col.71: 31-45; **figs.**

28-31).

(col. 4: 52 to col. 10: 67; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

As per 55-56 and 63-64, it is anticipated in the Deaton et al system for customer

promotion that a store will compute the average transaction amount or selling price of an item,

such as a brand of coffee, on which a discount coupon is given to an identified customer or

shopper based upon his prior shopping transaction, thereby determining the average gross profit

margin for said item.

As per claim 57, it is anticipated that a retail store using the Deaton et al system can very

easily determine the amount of money received based upon a difference between the number of

identified items purchased during a first predetermined interval or a first preset number of weeks

and a second predetermined interval or a second preset number of weeks, the average transaction

amount for said identified **item upon analyzing, using conventional data mining and/or niche**

marketing techniques, an identified shopper's prior shopping transaction during a series of

preset number of weeks and subsequently, upon meeting a predetermined criterion by the

shopper, providing a discount coupon to the identified shopper or customer redeemable on

the identified item, thereby making the coupon program more effective(col.71: 31-45; **figs.**

28-31).

59.

receiving data **or purchase data at a POS during a current transaction** corresponding

to representative **transaction** activities of said predetermined type of consumer, **who has**

previously indicated a tendency to buy an item based on his uses of the item (col. 71: 31-

45);

storing said data **or purchase data** corresponding to said representative

transaction activities of said predetermined type of consumer in marketing

database **or a database associated with CVC Master Controller of fig. 19**;

receiving data **or purchase data** corresponding to representative uses **or consumption** of

said item **or a certain type of coffee** by said predetermined type of **identified** consumer, **who**

uses a check or credit card at a POS (Anticipated step-col.71: 31-45);

storing said data **or purchase data** corresponding to said representative

uses **or consumption** of said item or **a certain type of coffee** by said predetermined type of

consumer in said marketing database **or a database associated with CVC Master Controller**

of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45);

determining a relationship **or correlation** between said data corresponding to said

representative **transaction** activities of said predetermined type of consumer and said data

corresponding to said representative uses **or consumption** of said item or **a certain type of**

coffee by said predetermined type of consumer **who uses a check or credit card at a POS**

(Anticipated step-col.71: 31-45), upon analyzing, using conventional data mining and/or

niche marketing techniques, an identified shopper's prior shopping transaction during a

series of preset number of weeks and subsequently, upon meeting a predetermined

criterion by the shopper, providing a discount coupon to the identified shopper or

customer redeemable on the identified item, thereby making the coupon program more

effective; and

storing said relationship **or correlation** in said marketing database **or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45).**

As per claims 60-62 and 65, it is anticipated in the system of Deaton et al that, upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting al least one predetermined criterion by the shopper, a discount coupon redeemable on an identified item or a certain type of coffee continuously used by the customer will be provided to the customer or shopper during a transaction at a POS, thereby making the coupon program distribution more effective (col. 71: 31-45). Moreover, it is understood that a message regarding the said discount coupon will be communicated to the identified customer at the POS by displaying the message on the ECR display 968 of fig. 20, by printing the message using receipt printer 969 of fig. 20 or by encoding the message on the customer's smart card 53. Regardless of the medium used, a copy of the message, which authorizes the identified customer to redeem the discount coupon, will be electronically stored in a database or marketing database of CVC Master Controller 965 of fig. 19 for verification. Finally, the redemption data regarding the discount coupon on the identified item will be stored in the database for further processing so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton et al (col. 71: 31-45; col. 4: 52 to col. 7: 54).

As per claim 66, Deaton et al disclose a system or method having the appropriate

Hardware and Software or program subroutines to perform the various steps or tasks as set forth

in their system (figs. 1-47; col. 10: 30-67) such as storing in a database associated with CVC

Master Controller 965 of fig.19 data representing one or more transaction activities of a

predetermined type of consumer, data representing one or more uses of an item by said

predetermined type of consumer based on the consumer's prior shopping transaction (col. 71: 35-

45) and data representing one or more marketing solutions or marketing strategies (figs. 1-47) for

the sale of said identified item to said predetermined type of consumer.

Please consider the entire reference.

Conclusion

Although the following references were not used in this office action, they were highly

considered. Applicants are further directed to consult these references for more details.

"Checking Out the Customer" by Lena H. Sun is a good prior art under a 102 rejection.

US Patent 5, 974,396A is a good prior art under a 102 rejection.

US Patent 5,999,908A to Abelow discloses a system to design an article or a piece of

hardware for a customer based on the customer's preferences and wherein the customer is

provided with a handheld device to monitor his use of the article or hardware for troubleshooting and/or upgrade purpose.

US Patent 5,459,306A to Stein et al. discloses a system for delivering product picks to a user wherein the user's use of the product is tracked and stored during the product lifespan and subsequently used to further target the user.

Further, all the IDS submitted by the Applicant read on the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the Examiner should be directed to

Jean D. Janvier, whose telephone number is (703) 308-6287). The aforementioned can normally

be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner

by telephone are unsuccessful, the Examiner's Supervisor, Mr. Eric W. Stamber, can be reached

at (703) 305- 8469.

For information on the status of your case, please call the help desk at (703) 308-1113.

Further, the following fax numbers can be used, if need be, by the Applicant(s):

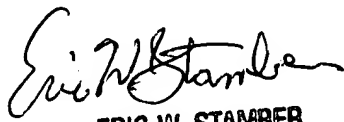After Final-   703-872-9327

Before Final -703-872-9326

Non-Official Draft- 703-746-7240

Customer Service- 703-872-9325

Please provide support, that is page and line numbers, for any amended or new

claim in an effort to help advance prosecution; otherwise any new claim language that is

introduced in an amended or new claim may be considered as new matter, especially if the

Application is a Jumbo Application.

JDJ

02/20/03

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